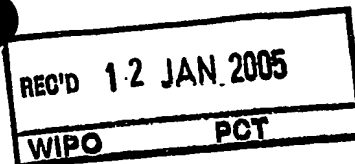


# PATENT COOPERATION TREATY

## PCT

### INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)



Applicant's or agent's file reference 204.909PCT	<b>FOR FURTHER ACTION</b> See Notification of Transmittal of International Preliminary Examination Report (Form PCT/IPEA/416)	
International application No. PCT/US03/31864	International filing date (day/month/year) 08 October 2003 (08.10.2003)	Priority date (day/month/year) 25 November 2002 (25.11.2002)
International Patent Classification (IPC) or national classification and IPC IPC(7): A43B 13/18, 21/30, 21/32; A61F 2/66 and US Cl.: 36/92, 27, 28, 38, 7.8, 151, 168, 179		
Applicant TRACKGUARD INC.		

1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.

2. This REPORT consists of a total of 5 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e., sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 2 sheets.

3. This report contains indications relating to the following items:

- I ☒ Basis of the report
- II ☐ Priority
- III ☐ Non-establishment of report with regard to novelty, inventive step and industrial applicability
- IV ☐ Lack of unity of invention
- V ☒ Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI ☐ Certain documents cited
- VII ☐ Certain defects in the international application
- VIII ☒ Certain observations on the international application

Date of submission of the demand 25 June 2004 (25.06.2004)	Date of completion of this report 03 January 2005 (03.01.2005)
Name and mailing address of the IPEA/US Mail Stop PCT, Attn: IPEA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer  Anthony Stashick Telephone No. 703-308-1148

## INTERNATIONAL PRELIMINARY EXAMINATION REPORT

International application No.

PCT/US03/31864

## I. Basis of the report

## 1. With regard to the elements of the international application:\*

- ☐ the international application as originally filed.
- ☒ the description:  
pages 1-17 \_\_\_\_\_ as originally filed  
pages NONE \_\_\_\_\_, filed with the demand  
pages NONE \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☒ the claims:  
pages NONE \_\_\_\_\_, as originally filed  
pages NONE \_\_\_\_\_, as amended (together with any statement) under Article 19  
pages NONE \_\_\_\_\_, filed with the demand  
pages 18 and 19 \_\_\_\_\_, filed with the letter of 27 September 2004 (27.09.2004)
- ☒ the drawings:  
pages 1-6 \_\_\_\_\_, as originally filed  
pages NONE \_\_\_\_\_, filed with the demand  
pages NONE \_\_\_\_\_, filed with the letter of \_\_\_\_\_.
- ☐ the sequence listing part of the description:  
pages NONE \_\_\_\_\_, as originally filed  
pages NONE \_\_\_\_\_, filed with the demand  
pages NONE \_\_\_\_\_, filed with the letter of \_\_\_\_\_.

## 2. With regard to the language, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language \_\_\_\_\_ which is:

- ☐ the language of a translation furnished for the purposes of international search (under Rule 23.1(b)).
- ☐ the language of publication of the international application (under Rule 48.3(b)).
- ☐ the language of the translation furnished for the purposes of international preliminary examination (under Rules 55.2 and/or 55.3).

## 3. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in printed form.
- ☐ filed together with the international application in computer readable form.
- ☐ furnished subsequently to this Authority in written form.
- ☐ furnished subsequently to this Authority in computer readable form.
- ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. ☒ The amendments have resulted in the cancellation of:

- ☐ the description, pages NONE
- ☒ the claims, Nos. 8
- ☐ the drawings, sheets/fig NONE

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).\*\*

\* Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17).

\*\* Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.

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## V. Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

### 1. STATEMENT

Novelty (N)	Claims <u>NONE</u>	YES
	Claims <u>1-7 and 9</u>	NO
Inventive Step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-7 and 9</u>	NO
Industrial Applicability (IA)	Claims <u>1-7 and 9</u>	YES
	Claims <u>NONE</u>	NO

### 2. CITATIONS AND EXPLANATIONS

Please See Continuation Sheet

**INTERNATIONAL PRELIMINARY EXAMINATION REPORT**

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**VIII. Certain observations on the international application**

The following observations on the clarity of the claims, description, and drawings or on the questions whether the claims are fully supported by the description, are made:

Claims 1-7 and 9 are objected to under PCT Rule 66.2(a)(v) as lacking clarity under PCT Article 6 because claims 1-9 are indefinite for the following reason(s): Claim 1 contains the phrase "the leg" in line 6 of the claim which renders the claim vague and indefinite because it is not clear as to which leg the applicant is referring. The claims are further indefinite because they would be incomplete without the reference numerals. Applicant should not rely on reference numerals to define their invention, but the claims should be able to stand alone without the reference numerals.

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## Supplemental Box

(To be used when the space in any of the preceding boxes is not sufficient)

Claims 1-7 and 9 lack novelty under PCT Article 33(2) as being anticipated by Lindqvist 6,247,249. Lindqvist '249 discloses all the limitations as claimed including the following: providing a shoe (Figures 2-4); the shoe having an insert (11) disposed inside the shoe; the shoe insert having an upper leg (12) and a lower leg (36); the upper leg and lower leg connected by a front end (at 29, 30) with an attachment segment; the leg having a concave segment (see Figures 1 and 7); the upper leg having an end point (16) and the lower leg having an end point (40) that is separated from the upper end point by a distance (see Figure 1); the insert having an effective length (From end points of legs to their connection point); placing a load on the shoe and the insert (using the shoe having the insert); reducing the distance between the upper leg end point and the lower leg endpoint (the insert operating as described by compressing together); reducing the effective length (contact point becoming greater along length); extending the contact segment from the medial to the lateral side of the insert (contact point extends across the width of the insert); the front of the insert forming an acute angle to a longitudinal axis of the insert (curved front end); compressing the upper leg end point towards the lower leg endpoint further reducing the distance between them and creating a larger contact area between the upper leg and the lower leg (normal use of the insert), thereby shortening the effective length of the legs (as contact area grows, effective length shortens from front to rear); effective length of outside shorter than middle length (see Figure 11, outside end, on left, from toe to heel is shorter than in the middle); effective length inside longer than effective length of middle (see Figure 11, inside end is longer from toe to heel than middle); the attachment point has a curvature (see Figure 7); compressing the end points of the legs toward one another until concave upper segment is in contact with concave lower segment (normal use of insert when load applied); the contact segment is remote from the end points and forms a loop between the contact points and the attachment points (see Figures 1 and 7); providing lower leg with concave segment (see Figure 1 and 7).

Claims 1-7 and 9 lack novelty under PCT Article 33(2) as being anticipated by either one of Herr et al. 6,029,374 or 5,701,686 (only reference to Herr et al. '374 will be discussed but one of ordinary skill in the art can apply the same reasoning to Herr '686)). Herr et al. '374 discloses all the limitations as claimed including the following: providing a shoe (included in disclosure "for use with a shoe"); the shoe having an insert (Figure 2) disposed inside the shoe; the shoe insert having an upper leg (17) and a lower leg (15); the upper leg and lower leg connected by a front end (10) with an attachment segment; the leg having a concave segment (see Figure 2); the upper leg having an end point (at 13) and the lower leg having an end point (at 13) that is separated from the upper end point by a distance (see Figure 2); the insert having an effective length (From end points of legs to their connection point); placing a load on the shoe and the insert (using the shoe having the insert); reducing the distance between the upper leg end point and the lower leg endpoint (the insert operating as described by compressing together); reducing the effective length (contact point becoming greater along length), extending the contact segment from the medial to the lateral side of the insert (contact point extends across the width of the insert); the front of the insert forming an acute angle to a longitudinal axis of the insert (curved front end, see Figure 12); compressing the upper leg end point towards the lower leg endpoint further reducing the distance between them and creating a larger contact area between the upper leg and the lower leg (normal use of the insert), thereby shortening the effective length of the legs (as contact area grows, effective length shortens from front to rear); effective length of outside shorter than middle length (see Figure 12,

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**Supplemental Box**

(To be used when the space in any of the preceding boxes is not sufficient)

outside end, on left, from toe to heel is shorter than in the middle); effective length inside longer than effective length of middle (see Figure 12, inside end is longer from toe to heel than middle); the attachment point has a curvature (see Figures 2 and 13); compressing the end points of the legs toward one another until concave upper segment is in contact with concave lower segment (normal use of insert when load applied); the contact segment is remote from the end points and forms a loop between the contact points and the attachment points (see Figures 2-4, 8 and 13); providing lower leg with concave segment (see Figure 2 and 13).

Claims 1-7 and 9 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability because the subject matter claimed can be made or used in industry.

----- NEW CITATIONS -----